

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: (Louis T. Fritz, Jr.
(Burlington Northern Inc.
(and
(Brotherhood Railway Carmen of the U.S. and Canada

Dispute: Claim of Employees:

My claim is Based on Rule #9, (Temporary vacancies away from Home Point) See Exhibit-A.

This rule explains the benefits an employee will receive when sent out to temporarily fill vacancies at an outlying point or Shop or sent out on a temporary transfer to an outlying point or Shop. Furthermore, in paragraph (E), it goes on to read as follows:

(E) This rule dose not apply to employees on furlough at their home point and permitted to accept temporary employment elsewhere.

My claim is this; if indeed the vacancy at Grand Forks would have been a perminent (sic) position the carrier might possible have a case. However, the position I was forced to fill at Grand Forks, North Dakota was a Temporary Position created by Mr. Glen Thompson, who was on sick leave. The car Foreman at Grand Forks told me upon my arrival that Glen Thompson was on sick leave and might be returning to work any day. The job I was forced to take was obviously a temporary position which I might lose at any time. Rule #9 states that the pay provisions of the first four (4) paragraphs are not applicable to furloughed employees. I agree with the carrier in this respect, but the rule (In Paragraph E) goes on to say employees on furlough at their home point are Permitted to Accept Temporary employment elsewhere! This is the specific part of the rule that the carrier refuses to recognize, and which I believe gave me, at that time, the option to take the job at Grand Forks if I so desired.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was employed by the Carrier as a Carman Apprentice at the St. Cloud, Minn. car shop facility. As a result of force reduction at the St. Cloud shop the Claimant's position was furloughed by a bulletin dated July 16, 1975 to be effective July 22, 1975. The Claimant was advised that in line with Rule 22(g) he must exercise his seniority to displace junior carmen apprentices within his seniority district. The Claimant exercised his seniority at Grand Forks, North Dakota, a point within his seniority district, and reported for work on Friday, July 25, 1975. However, the Claimant worked at Grand Forks just one day and did not return the following Monday. Furthermore, the Claimant left no word with the car foreman or any other Carrier official as to his whereabouts or status. Thus, it was concluded that the Claimant had abandoned his assignment and his file was consequently closed and the usual resignation forms were forwarded to him at his last known address at St. Cloud.

In January of 1976, the Carrier began hiring laborers for its St. Cloud shops and the Claimant was among those employees rehired to fill available positions. The Claimant thereafter progressed a claim on his own behalf seeking a return of his former seniority as a carman apprentice. The Claimant alleges that Rule 22(g) did not require that he exercise his seniority outside St. Cloud and that he was dismissed without a fair and impartial investigation in line with Rule 35(a).

The Claimant was well aware that he had district-wide seniority and that he had an obligation to "bump" a junior carman apprentice at Grand Forks. It is a well-established principle that a mutually agreed-upon interpretation of a collectively bargained-for rule must prevail. The negotiating parties have historically interpreted Rule 22(g) of the controlling Agreement as requiring employees whose positions are furloughed or abolished to exercise their seniority to the fullest possible extent throughout their seniority district. By abandoning his position at Grand Forks after only one day on the job, the Claimant failed to fulfill his obligations under the Agreement and as a result he forfeited his carman apprentice seniority rights.

Furthermore, the Claimant's charge that he was dismissed without an investigation is without merit since he voluntarily removed himself from the Carrier's service. Having exercised his seniority at Grand Forks as he was required under the contract to do, it was the Claimant's further obligation to protect that assignment. His failure to do so cannot be construed as a Carrier-imposed disciplinary act, and therefore, he was not entitled to a disciplinary investigation as he now claims.

The instant claim is entirely without merit and therefore shall be denied.

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Award No. 7486
Docket No. 7306-I-T
2-BNI-I-'78


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of April, 1978.